



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

August 22, 1991
AO-91-17

David Weigman, Secretary
Finance Committee
Town of Ludlow
Ludlow, MA 01056

Re: School Newsletter/Proposition 2 1/2 Override Election

Dear Mr. Weigman:

I am writing in response to your May 23, 1991, letter requesting an advisory opinion.

You have forwarded to me the May/June 1991 (Vol. I, No. 2) edition of the Ludlow Public School Newsletter called "In Session", a copy of which I have enclosed with this opinion. You state that the newsletter is published by the Ludlow Public Schools and sent to parents of children who attend the public schools. This particular newsletter contains an article entitled "Budget Cuts Spell Disaster For Schools". You also note that an election has been scheduled for June 2 regarding an override ballot question.¹ Some Ludlow residents have stated that they do not feel that the newsletter is an appropriate forum for this type of budgetary information. You seek guidance from this Office on the application of M.G.L. c.55 to this newsletter.

The campaign finance laws, M.G.L. c.55, prohibits the dissemination of publicly funded advocacy materials which expressly urge a particular vote on a ballot question to voters or any class of voters. See Anderson v. City of Boston, 376 Mass. 178, 380 N.E. 2nd 628 (1978) appeal dismissed, 439 U.S. 1069 (1973). It does not, however, prevent publicly funded discussion of public policy matters that may become the subject of a ballot question.

1. According to Ms. Betty Socha of the Selectman's office, the special election was held on Monday, June 3, 1991, not the previous day. I assume the June 2nd reference is a typographical error.

The article in the school newsletter discusses different budget levels (which may have become the subject matter of the June 3rd special election) and their impact on the schools. It also urges readers to support their schools by contacting the finance committee, selectman and others. However, the article in question neither discusses the June 3rd special election nor even mentions the possibility of such an election.² Therefore, in the opinion of this Office, the use of public funds to publish and distribute the attached edition of "In Session" does not violate M.G.L. c.55.

While it may have been known at the time the article was prepared and printed that a special override election was possible, the school department clearly has the right to discuss particular budgetary levels provided it does not promote or oppose a particular question submitted to the voters. It has not done so in this case.

This Office is aware that even though the newsletter was printed before the override question was placed "on the ballot" it was mailed at public expense after the question was placed "on the ballot". It is the opinion of this Office that public funds expended to promote or oppose a ballot question after a question is "on the ballot" would violate the campaign finance laws.³ However, as noted above, we do not view the attached edition of this newsletter as promoting or opposing a ballot question. Therefore, public monies may be used to distribute this information. I note that this edition of the newsletter also does not appear to be the kind of publicly funded "voter information" which is prohibited by other election laws absent express statutory authorization. See Memorandum from David E. Sullivan, Chief Legal Counsel, Secretary of State's Elections Division, July 26, 1991, attached hereto and note the analysis and material cited therein.

For further advice on providing information to voters or a class of voters you should contact the Secretary of State's Elections Division at (617) 727-2828.

2. According to Ms. Gail Stasky, the article was written in mid to late March and delivered to the printers on April 12, 1991, more than ten days before the April 23, 1991, vote by the selectmen to hold a special election.

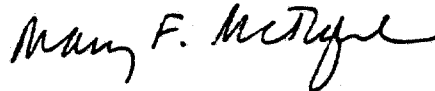
3. In some circumstances, public funds expended before a question is "on the ballot" may violate the campaign finance laws. For example, M.G.L. c.55 might be violated if a school newsletter contained an article which focused on a school department's recommendation for a proposition 2 1/2 override ballot question, urged voters to take the steps necessary to get the question placed on the ballot and urged supporters to vote for the override even if all costs were incurred and paid for (at public expense) prior to the question being formally "on the ballot".

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This opinion has been rendered solely on the basis of the representations made in your letter or otherwise set forth in this letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office should you have additional questions.

Very truly yours,

A handwritten signature in cursive script, reading "Mary F. McTigue".

Mary F. McTigue
Director

cc: Superintendent James E. Tierney
Ludlow Public Schools
Gail V. Stasky